STATE OF MICHIGAN

COURT OF APPEALS

KENNETH VEGH, Plaintiff-Appellant,	UNPUBLISHED August 18, 2011
v	No. 298027 Ingham Circuit Court
DEER CREEK MANOR APARTMENTS, Defendant-Appellee.	LC No. 09-000372-NO

Before: WHITBECK, P.J., and MARKEY and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10) in this premises liability action. We affirm.

While plaintiff was visiting his son at defendant's apartment complex one night, he fell after tripping on an ordinary, raised traffic island surrounded by curbing that served as a decorative divider between the parking spaces and the adjoining traffic lanes in the parking lot. Although the parking lot was normally lit at night, a severe storm caused an electrical failure in the area, and the storm's cloud cover increased the darkness. As plaintiff hurried through the parking lot to escape the storm and enter the building, he tripped on the island and fell. The trial court granted defendant's motion for summary disposition because the island was "not out of the ordinary," and thus did not present an unreasonable risk of harm.

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.*

The owner or occupier of land owes a duty to those who enter to protect them from unreasonably dangerous conditions on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609;

537 NW2d 185 (1995). The social guest of a landlord's tenant is an invitee of the landlord. *Petraszewsky v Keeth (On Remand)*, 201 Mich App 535, 540-541; 506 NW2d 890 (1993). "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). This duty is not absolute and does not extend to conditions from which an unreasonable risk of harm cannot be anticipated or to open and obvious dangers. *Riddle v McLouth Steel Prod Corp*, 440 Mich 85, 94; 485 NW2d 676 (1992); *Douglas v Elba, Inc*, 184 Mich App 160, 163; 457 NW2d 117 (1990).

An open and obvious danger is one that is known to the invitee or is so obvious that the invitee might reasonably be expected to discover it, i.e., it is something that an average user with ordinary intelligence could discover upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). A landowner does not owe a duty to protect invitees from any harm presented by an open and obvious danger unless special aspects of the condition, i.e., something unusual about the character, location, or surrounding conditions, make the risk of harm unreasonable. *Lugo*, 464 Mich at 517-519.

The existence of something as mundane as the curb of a traffic island can, by virtue of the fact that it protrudes from a flat expanse of ground, create a risk of tripping and falling. But the risk is generally not considered unreasonable because, like steps or differing floor levels, a traffic island is so common that an ordinarily prudent person should anticipate its presence and take appropriate care for his own safety. *Bertrand*, 449 Mich at 615-617. "Under ordinary circumstances, the overriding public policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary steps 'foolproof.'" *Id*. at 616-617. In this case, we agree with the trial court that there was nothing unusual about the "character, location, or surrounding conditions" of the traffic island that rendered it unreasonably dangerous. *Id*. at 617. To the extent the traffic island was a dangerous condition, defendant took reasonable steps to warn invitees by providing parking lot lighting. That a storm caused increased darkness and a power outage that extinguished the parking lot lighting does not alter that defendant took reasonable measures to warn invitees of the parking lot conditions. The evidence below showed neither exterior parking lot lights nor emergency backup lighting were required by applicable building codes. A premises owner is not an insurer of the safety of invitees and need not take extraordinary measures to warn of a risk that does not present an unreasonable risk of injury. See *Riddle*, 440 Mich at 94, and *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 500; 418 NW2d 381 (1988).

Plaintiff relies on *Ahola v Genesee Christian School*, unpublished opinion per curiam of the Court of Appeals, issued December 15, 2009 (Docket No. 283576), to argue that the lack of illumination created a material question of fact whether the condition here was unreasonably dangerous. We disagree. First, *Ahola* was an unpublished opinion and therefore lacks binding precedential authority. MCR 7.215(C)(1). Second, *Ahola* relied on two published cases that are factually distinguishable from the present case. Both *Abke v Vandenberg*, 239 Mich App 359; 608 NW2d 73 (2000) and *Knight v Gulf & Western Props, Inc*, 196 Mich App 119; 492 NW2d 761 (1992), involved injuries sustained in falls from unexpected loading docks—not tripping on a simple curb akin to a single step as in this case. Finally, we find that the dissenting opinion in

Aloha more aptly applies to this case. A risk does not become unreasonably dangerous simply because, in hindsight, some extra remedial measure might have rendered the condition safer.

We affirm. Defendant may tax costs pursuant to MCR 7.219 as the prevailing party.

/s/ William C. Whitbeck
/s/ Jane E. Markey
/s/ Kirsten Frank Kelly